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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/828,226
Filing Date: April 09, 2001
Appellant(s): MCINTYRE, KEVIN A.

Alan M. Kagen
(Reg. No. 36,178)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/22/2006 appealing from the Office action mailed 6/30/2006

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,615,269	MICALI	3-1997
6,112,189	RICKARD et al	8-200

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 2, 9-14, 1 7 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rickard et al (US 6,112,189) in view of Micali (US 5,615,269)

As per claims 1, 2, 9-14, 1 7 and 25, Rickard discloses receiving a lower limit price for a product from a seller (*offering party*), the buyer being unaware of the seller's lower limit price (see Rickard, fig. 13, Abstract, col. 2, lines 60-65,. col. 3, lines 12-53,. col. 6, lines 4-18., col. 7, lines 28-33; and col. 8, lines 10-19)

--receiving an upper limit bid for the product from the buyer, the seller being unaware of the buyer's upper limit bid; (see Rickard, fig. 13, Abstract, col. 2, lines 60-65,. col. 3, lines 12-53; col. 6, lines 4-18,. col. 7, lines 28-33,. and col. 8, lines 10-19),

--comparing the seller lower limit price and buyer upper limit (see 13, Abstract, "*joint degree of satisfaction*" or "*mutual degree of satisfaction*", col. 2, lines 60-65; col. 3, lines 12-53,, col. 6, lines 4-18,. col. 7, lines 28-33., and col. 8, lines 10-19)

--if an overlap region exists between the seller lower limit price and the buyer upper limit bid, setting a maximum point for the product with the overlap region that is based on the lower limit and the 'upper limit bid (see Rickard, fig. 13, Abstract, col. 2, lines 60-65,. col. 3, lines 12-53; col. 6, lines 4-18., col. 7, lines 28-33., and col. 8, lines 10-19);

Rickard disclose a maximum point but fails to disclose a price point per se. Since the maximum point is related to mutual satisfaction and that one of the parameters for mutual satisfaction is price for a trades security, it would have been obvious for an artisan within the ordinary skill in the art at the time of the invention to incorporate price as one of the variables that the system would use to determine the negotiations between parties (particularly when trading securities). Thus an artisan at the time of the invention would employ such a variable being a notoriously old and well known negotiable feature which is conventionally used within the art. Thus a feature would have been an obvious expedient to one of ordinary skill in the art.

Rickard discloses several graphs which illustrate levels of trades satisfaction along with minimum satisfaction or no satisfaction regions (figs. 1-4) and also discloses automatically executing a scaled down version of desired trade for each security and preserving a relative volume mix among individual securities if adequate contra volume *does not exist* (see Rickard, col. 8, line 10 to col. 9, line33) which would invariably play a role in the location of an overlap region, but fails to explicitly disclose if an overlap region does not exist between the seller and the lower limit price and the buyer upper limit bid, further processing the transaction without seller or buyer input (or blind) by setting a theoretical price point between the lower limit price and the upper limit bid.

Micali teaches a method of electronic communications between a first party and a second party enabling further processing of an electronic transaction without seller or buyer input (see blind negotiations" and "split the middle" col. 2, 11. 7-48). Since Rickard adjusts for volume changes (which are also linked to overlap and price), it would have been obvious for an artisan art the time of Rickard to have been familiar with the concept of "split the difference" to

compensate for lack of volume in Rickard invention which was caused by lack of mutual satisfaction between buyers and sellers. Thus Rickard would automatically seek to "split the middle" or "split the difference" , as taught in Micali, to allow buyers and sellers to make transactions.

(10) Response to Argument

The Appellant, for claim 1, argues that nowhere does the Micali patent contemplate a manner of processing a transaction when an overlap region does not exist, and that references to "splitting the middle" in Micali patent relate only to scenario where there is an overlap region between the buyer and seller reservation prices. The examiner disagrees. It appears that the appellant places a more stringent standard on the reference than on the presented claim language. Thus is considered on the part of the examiner a reversal of roles wherein prior art is provided based upon what the art would suggest to one of ordinary skill in the art. Particularly, it is asserted that the appellant provides alternative language in the claim 1, for which processing a transaction when the overlap region does not exist scenario would not be considered. Furthermore it is asserted that one of ordinary skill in the art would consider the concept of "splitting the middle" in Micali to show that in either situation of overlap or non-overlap regions, provides as a technique by which buyers sellers can agree on a price. Thus it is submitted that one of ordinary skill in the art would have used the "splitting the difference" technique described in Micali to increase the number of settlements/agreements being applicable in both scenarios.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Daniel S. Felten

Conferencees:

Vincent Millin
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